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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NICHOLAS W. OAKLEY

Appeal 2008-5343
Application 10/751,174
Technology Center 2800

Decided: September 30, 2008

Before CHUNG K. PAK, ROMULO H. DELMENDO, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

DELMENDO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 1-17 (Appeal Brief filed July 12, 2006, hereinafter “App. Br.”; Final Office Action mailed January 10, 2006). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Appellant's invention relates to an apparatus with a compound hinge for a mobile computing device (Specification, hereinafter "Spec.", ¶¶0010, 0013-0018).

Claim 1 on appeal reads as follows:

1. An apparatus comprising:

a base;

a lid;

a first link hinged to the base about a first axis at a first position, and hinged to the lid about a second axis; and

a second link hinged to the base about a third axis at a second position, and hinged to the lid about a fourth axis, wherein a distance between the first position and the second position is shorter than one half of the length of the base.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Kung	6,384,811 B1	May 7, 2002
Landry	6,654,234 B2	Nov. 25, 2003

The Examiner rejected the claims under 35 U.S.C. § 103(a) as follows: (i) claims 1-5, 7-11, and 14-16 as unpatentable over Kung; and (ii) claims 6, 12, 13, and 17 as unpatentable over Kung in view Landry (Examiner's Answer mailed October 17, 2006, hereinafter "Ans.", 3-11).

ISSUE

Has Appellant demonstrated error in the Examiner's determination that a person having ordinary skill in the art would have found the subject matter of the appealed claims obvious in view of the applied prior art?

FINDINGS OF FACT

1. Appellant's Figure 4 is reproduced below:

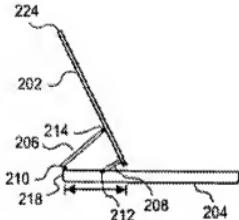


FIG. 4

2. Appellant's Figure 4 is said to depict "a compound hinge for a mobile computing apparatus in an unfolded position, according to one embodiment" (Spec. ¶0008).
3. Kung's Figure 6 is reproduced below:

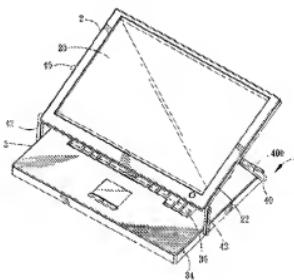


FIG. 6

4. Kung's Figure 6 is said to depict a perspective view of a display module in an ergonomic keyboard typing position, wherein 40

denotes a main link and 42 denotes an auxiliary link (col. 2, ll. 16-18; col. 3, l. 43 to col. 4, l. 8).

5. Kung's Figure 7 is reproduced below:

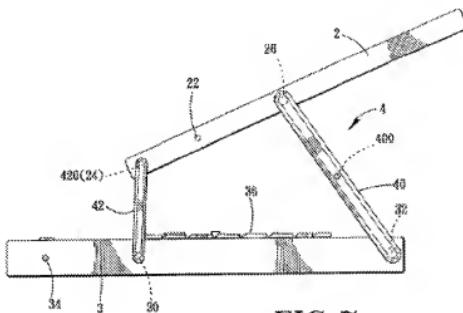


FIG. 7

6. Kung's Figure 7 is said to depict a side view of a display module in an ergonomic keyboard typing position, wherein 30 and 32 denote pivot retainers (col. 2, ll. 19-21; col. 3, l. 43 to col. 4, l. 8).

7. Landry teaches a multi-functional computing device that may be configured for a plurality of applications, wherein multiple joints disposed between multiple sections facilitate rotational orientation of the sections to adapt to space limitations and other characteristics of a desired environment or application (col. 2, ll. 4-13; Figures 3 and 5; col. 4, l. 59 to col. 5, l. 34; col. 6, ll. 25-49).

PRINCIPLES OF LAW

On appeal to this Board, Appellant must show that the Examiner erred in finally rejecting the claims. *Cf. In re Kahn*, 441 F.3d 977, 985-986 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)); *see also* 37 C.F.R. § 41.37(c)(1)(vii).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1734 (2007).

KSR reaffirms the analytical framework set out in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), which states that an objective obviousness analysis includes: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; and (3) resolving the level of ordinary skill in the pertinent art. *KSR*, 127 S. Ct. at 1734. Secondary considerations such as commercial success, long felt but unsolved needs, or failure of others “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *Id.* (quoting *Graham*, 383 U.S. at 17-18).

KSR disapproved a rigid approach to obviousness (*i.e.*, an analysis *limited to* lack of teaching, suggestion, or motivation). *KSR*, 127 S. Ct. at 1741 (“The obviousness analysis cannot be confined by a formalistic

conception of the words teaching, suggestion, and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents.”). *See also DyStar Textilsfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006) (“Our suggestion test is in actuality quite flexible and not only permits, but requires, consideration of common knowledge and common sense”); *Alza Corp. v. Mylan Labs., Inc.*, 464 F.3d 1286, 1291 (Fed. Cir. 2006) (“There is flexibility in our obviousness jurisprudence because a motivation may be found *implicitly* in the prior art. We do not have a rigid test that requires an actual teaching to combine...”).

KSR further instructs “that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *KSR*, 127 S. Ct. at 1740.

ANALYSIS

While the Appeal Brief includes separate headings for various claim groupings, Appellant argues both rejections together and relies on the same argument for all the claims. Accordingly, we confine our discussion of the rejections to the issue raised by the argument. 37 C.F.R. § 41.37(c)(1)(vii).

Appellant contends that, in contrast to the claimed invention (claim 1), “the distance between a position (Kung reference numeral 32) where the first link hinges to the base and the distance between a position (Kung reference numeral 30) where the second link hinges to the base is greater than one half of the length of the base” (App. Br. 5; Facts 1-6). According to Appellant, modification of Kung to arrive at the claimed element (“wherein a distance

between the first position and the second position is shorter than one half of the length of the base") would render Kung inoperable (App. Br. 6).

We cannot agree with Appellant. Kung does not limit the specific lengths or positions of links 40, 42 and pivot retainers 30, 32. Kung leaves the appropriate lengths or positions to a person having ordinary skill in the art to determine, through nothing more than routine experimentation, all the workable lengths of links 40, 42 and positions of pivot retainers 30, 32, including Appellant's claimed configurations. Thus, we agree with the Examiner's determination that the subject matter of appealed claim 1 would have been *prima facie* obvious. Appellant has not relied upon, much less proffered, any evidence of unexpected criticality for the claimed distance.

Landry also teaches a multi-functional computing device that may be configured for a plurality of applications, wherein multiple joints disposed between multiple sections facilitate rotational orientation of the sections to adapt to space limitations and other characteristics of a desired environment or application (Fact 7). Appellant, however, has not directed any argument against the Examiner's reliance on Landry's teachings.

We have considered all the arguments, including those in the Reply Brief filed on December 20, 2006, but find them unpersuasive for reasons given above. *Cf. Hartman v. Nicholson*, 483 F.3d 1311, 1315 (Fed. Cir. 2007) (all remaining arguments were considered, but none were found that warrant reversal).

CONCLUSION

On this record, we determine that Appellant has failed to demonstrate any error in the Examiner's determination that a person having ordinary skill

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in the art would have found the subject matter of the appealed claims obvious in view of the applied prior art.

DECISION

The Examiner's decision to reject appealed claims 1-17 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

tf/ls

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